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18th CONGRESS, 1st SESSION.

U. S. President, James Monroe

MESSAGE

FROM THE

PRESIDENT OF THE UNITED STATES,

TRANSMITTING CERTAIN DOCUMENTS RELATING TO

The Claim of the State of Massachusetts,

FOR SERVICES RENDERED BY THE MILITIA OF THAT STATE,

During the late war with Great Britain.

FEBRUARY 23, 1824.

Read: Ordered, that it lie upon the table.

WASHINGTON:

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1824.

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MESSAGE.

To the Senate and House of Representatives of the United States:

I herewith transmit to Congress certain documents relating to a claim of Massachusetts, for services rendered by the militia of that state in the late war, and for which payment was made by the state. From the particular circumstances attending this claim, I have thought it proper to submit the subject to the consideration of Congress.

In forming a just estimate of this claim, it will be necessary to recur to the cause which prevented its admission, or the admission of any part thereof, at an earlier day. It will be recollected, that, when a call was made on the militia of that state for service, in the late war, under an arrangement which was alike applicable to the militia of all the states, and in conformity with the acts of Congress, the Executive of Massachusetts refused to comply with the call, on the principle that the power vested in Congress by the constitution, to provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions, was not a complete power for those purposes, but conditional, and dependant on the consent of the Executives of the several states; and, also, that, when called into service, such consent being given, they could not be commanded by a regular officer of the United States, or other officer than of the militia, except by the President, in person. That this decision of the Executive of Massachusetts was repugnant to the constitution of the United States, and of dangerous tendency, especially when it is considered that we were then engaged in a war with a powerful nation for the defence of our common rights, was the decided opinion of this Government; and when the period, at which that decision was formed, was considered, it being as early as the fifth of August, eighteen hundred and twelve, immediately after the war was declared, and that it was not relinquished during the war, it was inferred, by the Executive of the United States, that the decision of the Executive of that state was alike applicable to all the services that were rendered by the militia of the state during the war.

In the correspondence with the Governor of Massachusetts at that important epoch, and on that very interesting subject, it was announced to him, by the Secretary of War, that, if the militia of the state were called into service by the executive of the state, and not put under the command of the Major General of the United States, as the militia of the other states were, the expense attending their service

would be chargeable to the state, and not to the United States. It was also stated to him, at the same time, that any claim which the state might have for the reimbursement of such expenses, could not be allowed by the Executive of the United States, since it would involve principles on which that branch of the Government could not decide.

Under these circumstances, a decision on the claim of the state of Massachusetts has hitherto been suspended, and it need not be remarked, that the suspension has proceeded from a conviction that it would be improper to give any sanction by its admission, or by the admission of any part thereof, either to the construction of the constitution contended for by the then Executive of that state, or to its conduct, at that period, towards the General Government and the Union.

In January, eighteen hundred and twenty-three, the Representatives in Congress from Massachusetts and Maine, suggested, by memorial, that the constitutional objection could not apply to a portion of the claim, and requested that the accounting officer of the Government might be instructed to audit and admit such part as might be free from that objection. In all cases where claims are presented for militia service, it is the duty and the practice of the accounting officer to submit them to the department for instruction as to the legality of the claim; that is, whether the service had been rendered by order of the competent authority, or otherwise, under circumstances to justify the claim against the United States, admitting that the evidence in support of it should be satisfactory. To this request there appeared to be no well-founded objection, under the reservation, as to the constitutional principle, and accordingly an order was given to the accounting officers of the Treasury to proceed in auditing the claim, with that reservation.

In conformity with this arrangement, the Executive of Massachasetts appointed two citizens of that state, commissioners to attend to the settlement of its claim, and who, in execution of the trust reposed in them, have presented to the accounting officer of the Treasury that portion, comprehending the services of the fifth division of the militia of the state, which has been audited and reported for consideration, subject to the objection above stated. I have examined this report, with the documents presented by the commissioners, and am of opinion that the services rendered by that division were spontaneous, patriotic, and proper, necessary for self-defence, to repel, in some instances, actual invasion, and in others, to meet, by adequate preparation, invasions that were menaced. The commissioners of the state having intimated that other portions of service stood on similar ground, the accounting officer has been instructed, in auditing the whole, to do it in such manner as to enable the Department to show distinctly under what circumstances each portion of service was rendered, whether voluntary, called out by invasion, or the menace of invasion, or by public authority; and in such case, whether the militia rendering such service was placed under the authority of the United States, or retained under that of the state.

It affords me great pleasure to state, that the present Executive of Massachusetts has disclaimed the principle which was maintained by

the former Executive, and that in this disclaimer both branches of the Legislature have concurred. By this renunciation, the state is placed on the same ground, in this respect, with the other states, and this very distressing anomaly in our system is removed. It is well known that the great body of our fellow-citizens in Massachusetts are as firmly devoted to our Union, and to the free republican principles of our government, as our fellow-citizens of the other states. Of this important truth, their conduct in every stage of our revolutionary struggle, and in many other emergencies, bears ample testimony; and, I add, with profound interest and a thorough conviction, that, although the difficulty adverted to, in the late war, with their Executive, excited equal surprise and regret, it was not believed to extend to them. There never was a moment when the confidence of the government in the great body of our fellow-citizens of that state, was impaired; nor is a doubt entertained that they were, at all times, willing and ready to support their rights, and repel an invasion by the enemy.

The commissioners of Massachusetts have urged, in compliance with their instructions, the payment of so much of their claim as applies to the services rendered by the fifth division, which have been audited, and I should have no hesitation in admitting it, if I did not think, under all the circumstances of the case, that the claim, in all its parts, was cognizable by Congress alone. The period at which the constitutional difficulty was raised, by the Executive of the state, was in the highest degree important, as was the tendency of the principle for which it contended, and which was adhered to during the war. The public mind throughout the Union was much excited by that occurrence, and great solicitude was felt as to its consequences. The Executive of the United States was bound to maintain, and did maintain, a just construction of the constitution: in doing which it is gratifying to recollect that the most friendly feelings were cherished towards their brethren of that state. The Executive of the state was warned, in the correspondence which then took place, of the light in which its conduct was viewed, and of the effect it would have, so far as related to the right of the Executive of the United States, on any claim which might afterwards be presented by the state to compensation for such services. Under these circumstances, the power of the Executive of the United States to settle any portion of this claim, seems to be precluded. It seems proper, also, that this claim should be decided, on full investigation, before the public, that the principle on which it is decided, may be thoroughly understood by our fellow-citizens of every state, which can be done by Congress alone; who alone, also, possess the power to pass the laws which may be necessary to carry such decision into effect.

In submitting this subject to the calm and enlightened judgment of Congress, I do it with peculiar satisfaction, from a knowledge that you are now placed, by the course of events, in a situation which will enable you to adopt such measures, as will not only comport with the sound principles of our government, but, likewise, be conducive to

other the highest interests of our Union. By the renunciation of the principle maintained by the then Executive of Massachusetts, as has been done by its present Executive and both branches of the Legislature, in the most formal manner, and in accord with the sentiments of the great body of the people, the constitution is restored, in a very important feature—that connected with the public defence: and in the most important branch, that of the militia, to its native strength. It is very gratifying to know, that this renunciation has been produced by the regular, orderly, and pacific operation of our republican system, whereby those who were in the right at the moment of difficulty, and who sustained the government with great firmness, have daily gained strength until this result was accomplished. The points on which you will have to decide, are, what is fairly due for the services which were actually rendered? By what means shall we contribute most to cement the Union, and give the greatest support to our most excellent constitution? In seeking each object separately we are led to the same result. All that can be claimed by our fellow-citizens of Massachusetts is, that the constitutional objection be waived, and that they be placed on the same footing with their brethren in the other states—that, regarding the services rendered by the militia of other states, for which compensation has been made, giving to the rule the most liberal construction, like compensation be made for similar services rendered by the militia of that state.

I have been led to conclude, on great consideration, that the principles of justice, as well as a due regard for the great interests of our Union, require that this claim, in the extent proposed, should be acceded to. Essential service was rendered, in the late war, by the militia of Massachusetts, and with the most patriotic motives. It seems just, therefore, that they should be compensated for such services, in like manner with the militia of the other states. The constitutional difficulty did not originate with them, and has now been removed. It comports with our system to look to the service rendered, and to the intention with which it was rendered, and to award the compensation accordingly, especially as it may now be done without the sacrifice of principle. The motive, in this instance, is the stronger, because well satisfied I am, that, by so doing, we shall give the most effectual support to our republican institutions. No latent cause of discontent will be left behind. The great body of the people will be gratified; and even those who now survive, who were then in error, cannot fail to see, with interest and satisfaction, this distressing occurrence thus happily terminated. I, therefore, consider it my duty to recommend it to Congress to make provision for the settlement of the claim of Massachusetts, for services rendered in the late war by the militia of the state, in conformity with the rules which have governed in the settlement of the claims for services rendered by the militia of the other states.

JAMES MONROE.

Washington, February 23, 1824.

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